

1 **EXPERT DISCOVERY AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Steve Barth**

5 AN ACT RELATING TO UTAH CODE OF CRIMINAL PROCEDURE; AMENDING EXPERT
6 DISCOVERY PROVISIONS FOR EXPERT TESTIMONY AT A PRELIMINARY
7 HEARING.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **77-17-13**, as enacted by Chapter 139, Laws of Utah 1994

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **77-17-13** is amended to read:

13 **77-17-13. Expert testimony generally -- Notice requirements.**

14 (1) (a) If the prosecution or the defense intends to call any expert to testify in a felony case
15 at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules
16 of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party
17 as soon as practicable but not less than 30 days before trial or ten days before the hearing.

18 **(b)** Notice shall include the name and address of the expert, the expert's curriculum vitae,
19 and a copy of the expert's report.

20 ~~[(b)]~~ (2) (a) The expert shall prepare a written report relating to the proposed testimony.

21 **(b)** If the expert has not prepared a report or the report does not adequately inform
22 concerning the substance of the expert's proposed testimony including any opinion and the bases
23 and reasons of that opinion, the party intending to call the expert shall provide to the opposing
24 party a written explanation of the expert's anticipated testimony sufficient to give the opposing
25 party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared
26 by the expert when available.

27 ~~[(2)]~~ (3) (a) As soon as practicable after receipt of the expert's report, the party receiving

1 notice shall provide [~~notice~~] to the other party notice of witnesses whom the party anticipates
2 calling to rebut the expert's testimony, including the name and address of any expert witness and
3 the expert's curriculum vitae. If available, a report of any rebuttal expert shall be provided to the
4 other party.

5 (b) If the rebuttal expert has not prepared a report or the report does not adequately inform
6 concerning the substance of the expert's proposed testimony, or in the event the rebuttal witness
7 is not an expert, the party intending to call the rebuttal witness shall provide a written explanation
8 of the witness's anticipated rebuttal testimony sufficient to give the opposing party adequate notice
9 to prepare to meet the testimony, followed by a copy of any report prepared by any rebuttal expert
10 when available.

11 [~~(3)~~] (4) (a) If the defendant or the prosecution fails to meet the requirements of this
12 section, the opposing party shall be entitled to a continuance of the trial or hearing sufficient to
13 allow preparation to meet the testimony.

14 (b) If the court finds that the failure to comply with this section is the result of bad faith
15 on the part of any party or attorney, the court shall impose appropriate sanctions.

16 (5) (a) For purposes of this section, testimony of an expert at a preliminary hearing held
17 pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the
18 expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter
19 testified to by the expert at the preliminary hearing.

20 (b) Upon request, the party who called the expert at the preliminary hearing shall provide
21 the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial
22 or any hearing at which the expert may be called as an expert witness.

Legislative Review Note
as of 1-23-98 7:34 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel